

**Notice of Allowability**

Application No.

10/072,592

Examiner

Gentle E. Winter

Applicant(s)

QI ET AL.

Art Unit

1746

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 4/14/04.
2. ☒ The allowed claim(s) is/are 1 and 14-24, renumbered as claims 1-12.
3. ☒ The drawings filed on 11 February 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 1 and 14-24 drawn to a procedure, and claims 2-13, drawn to an electrochemical cell, were restricted.
2. Applicant's election of group I, claims 1 and 14-24 in Paper No. 041404 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

## **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.
4. The application has been amended as follows:
5. Non-elected claims 2-13 are cancelled without prejudice.
6. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

*Claim Rejections - 35 USC § 102--Withdrawn*

7. Claims 1, 14-24 were rejected under 35 U.S.C. 102(b) as being anticipated by Journal of Electrochemical Society Electrochemical Science and Technology Titled: Methods to Advance Technology of PEM Fuel Cells by E. A. Ticianelli et al and dated September 1988. "Ticianelli".

8. Claim 1 is drawn to a procedure for activating a membrane-electrode assembly (MEA) of an electrochemical cell operating at substantially ambient conditions, said activation procedure including the steps of exposing the MEA to temperature higher than ambient temperature, and substantially simultaneously back- pressurizing gaseous reactants; after the activation of the electrochemical cell, returning conditions of said electrochemical cell to ambient conditions; and operating said electrochemical cell.

9. Applicants credibly argue that there is an "important difference to be noted is between Applicants' FIGURE 1, Curve B (i.e., for the same cell operated under the same operating conditions as for FIGURE 1, Curve A, except that the cell has undergone activation), and TICIANELLI et al. FIGURE 5, Curves a or b."

10. Applicants persuasively argue that it is readily observable that "Applicants' cell performance is significantly different and improved compared to the TICIANELLI et al. cell."

Applicants continue:

The only difference is that Applicants' cell has been activated in accordance with the method of the present invention. In fact, in order to achieve performance similar to that of Applicants' Curve B (still at 351C cell temperature, 450C hydrogen humidification temperature, and an air humidification temperature of 45QC),

Art Unit: 1746

TICIANELLI et al. must operate their cell at 80°C, with hydrogen pressure at 3 atmospheres and 02 pressure at 5 atmospheres. These are significantly different operating conditions from Applicants' substantially ambient temperature and atmospheric pressures as disclosed and claimed.

Applicants' arguments are persuasive.

*Allowable Subject Matter*

11. Claims 1 and 14-24, renumbered as 1-12 are allowable.
12. The following is a statement of reasons for the indication of allowable subject matter:
13. Applicants persuasively argue that it is readily observable that "Applicants' cell performance is significantly different and improved compared to the TICIANELLI et al. cell."

Applicants continue:

14. Ticianelli et al., which is considered the closest prior art, fail to teach the results obtained in the present invention. Specifically, Ticianelli et al. fail to teach the activation step and associated results which is disclosed as an essential element of claimed invention, as described in claim 1.

15. It is well settled that a patent may be granted for a discovery of a unexpectedly good result that does not logically flow from the teaching of the closest prior art. *In re Rau*, 117 USPQ 215 (CCPA 1958). In this case the prior art fails to produce the results of the present invention.

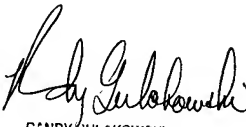
Art Unit: 1746

*Conclusion*

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E. Winter whose telephone number is (571) 272-1310. The examiner can normally be reached on Monday-Friday 7:00-3:30.
2. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9306 for After Final communications.
3. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 273-1310.

Gentle E. Winter  
Examiner  
Art Unit 1746

May 25, 2004

  
RANDY GULAKOWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700